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- [ABOUT](#)
- [PRINT EDITION](#)
- [ONLINE EDITION](#)
- [SYMPOSIUM](#)
- [SUBMISSIONS](#)
- [PUBLIC INTEREST](#)

<
Navigation

- [Main](#)
- [Registration](#)
- [Schedule](#)
- [Bios](#)
- [Resources](#)
- [Videos & Press](#)



2016 *University of Pennsylvania Law Review* Symposium

1966 and All That: Class Actions and Their Alternatives After Fifty Years

November 11-12, 2016 Philadelphia, PA

Organizing Faculty: Stephen Burbank, Jonah Gelbach, and Tobias Wolff

In 1966, the Supreme Court promulgated amendments to Rule 23 of the Federal Rules of Civil Procedure — the class action provision — that proved to be the most consequential use of its civil rulemaking authority since the promulgation of the original rules in 1938. The 1966 amendments to Rule 23 replaced a little-used, rigid, hidebound provision with a powerful, flexible, open-ended tool for addressing mass harms affecting large numbers of people. The amended Rule unleashed unprecedented litigation power that reflected commitment by Congress and the Court to facilitate private enforcement of statutory and constitutional rights. Interest groups were forced to confront the power of procedure, and civil procedure in the federal courts became politicized as never before.

Fifty years later, the central dilemma posed by the class action remains unsolved: how to use litigation to carry into effect important substantive policies for large numbers of injured individuals while preserving fairness to defendants and ensuring that the rights of claimants are not improperly compromised. The landscape on which that struggle plays out has expanded. In response to increasingly restrictive federal class action jurisprudence and the expansion of federal jurisdiction in the Class Action Fairness Act of 2005, lawyers for plaintiffs pivoted to non-class alternatives, developing mass inventories of individual claims in higher-value disputes that gave them much of the leverage of a class action with none of the constraints. Defense lawyers, in turn, have made increasing use of the federal Multi-District Litigation statute (MDL), a potent consolidating tool that blunts the tactical options available to plaintiffs and can enable defendants to control the momentum of the litigation process. The federalization of class actions through CAFA has only increased the power of the MDL.

The University of Pennsylvania Law Review will take the occasion of the fiftieth anniversary of the 1966 Rule 23 amendments to explore the future of the class action and its alternatives. The symposium will dedicate panels to the doctrinal and litigation history that has produced the present landscape; the current state of class litigation;

alternatives to the class action; and questions of policy and theory that cut across both class actions and the alternatives. Although organized around the discussion of papers by scholars selected for their expertise in the field, the symposium will integrate the commentary of some of the most influential judges in the country, and there will be ample time for discussion with those in attendance, who are expected to include leading practitioners, interested students, and other members of the bench and the academy.

Please direct all questions to Andrew D'Aversa at symposium@pennlawreview.com.

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[Symposium](#)

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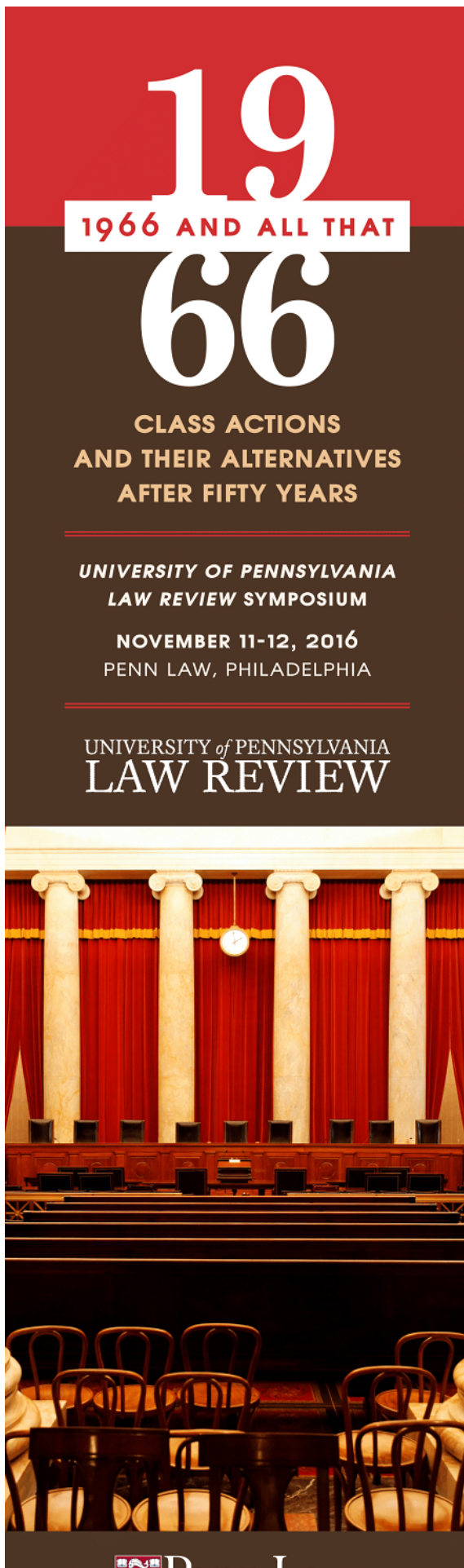
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**FRIDAY, NOVEMBER 11**

1:00 - 2:00 PM

Registration, Fitts Auditorium

2:00 - 2:30 PM

Introductory Remarks, Fitts Auditorium

2:30 - 4:00 PM

Panel 1 – Class Action History, Fitts Auditorium

PAPER PRESENTERS: Stephen Burbank (Penn) & Sean Farhang (Berkeley)
David Freeman Engstrom (Stanford)
David Marcus (Arizona)

COMMENTATORS: Samuel Issacharoff (NYU)
Catherine Struve (Penn)

MODERATOR: Catherine Struve (Penn)

4:30 - 6:00 PM

Panel 2 – Contemporary Class Action Practice, Fitts Auditorium

PAPER PRESENTERS: J. Maria Glover (Georgetown)
Deborah Hensler (Stanford)
Judith Resnik (Yale)

COMMENTATORS: Janet Cooper Alexander (Stanford)
Judge William A. Fletcher (9th Cir.)

MODERATOR: Judge Anthony J. Scirica (3d Cir.)

6:00 - 7:00 PM

Reception, The Goat**SATURDAY, NOVEMBER 12**

8:00 - 9:00 AM

Registration and Breakfast, Fitts Auditorium

9:00 - 10:30 AM

Panel 3 – Alternatives to Class Actions, Fitts Auditorium

PAPER PRESENTERS: Andrew Bradt (Berkeley)
Abbe R. Gluck (Yale)
Margaret H. Lemos (Duke)

COMMENTATORS: Edward H. Cooper (Michigan)
Troy A. McKenzie (NYU)

MODERATOR: Judge Theodore A. McKee (3d Cir.)

10:45 AM - 12:00 PM

Panel 4 – Cross-Cutting Issues, Fitts Auditorium

PAPER PRESENTERS: John C. Coffee, Jr. (Columbia)
Jonah Gelbach (Penn)
Tobias Wolff (Penn)

COMMENTATORS: Robert G. Bone (Texas)
Linda J. Silberman (NYU)

MODERATOR: Stephen Burbank (Penn)

12:15 - 1:00 PM

Lunch, Levy Conference Center

1:00 - 2:00 PM

Keynote, Levy Conference Center

INTRODUCTION: Jonah Gelbach (Penn)

REMARKS: Chief Judge Diane P. Wood (7th Cir.)

2:15 - 4:00 PM

Final Panel – The Future of Class Actions and Their Alternatives, Fitts Auditorium

PANELISTS: Stephen Burbank (Penn)
Edward H. Cooper (Michigan)
Jonah Gelbach (Penn)
Deborah Hensler (Stanford)
Richard Marcus (UC Hastings)
Judge Anthony J. Scirica (3d Cir.)
Catherine Struve (Penn)
Tobias Wolff (Penn)

MODERATOR: Arthur R. Miller (NYU)

To register, please visit our website.

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/SYMPOSIUM**CLE CREDITS** This program has been approved for 8.0 substantive CLE credits for Pennsylvania lawyers.

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- [ABOUT](#)
- [PRINT EDITION](#)
- [ONLINE EDITION](#)
- [SYMPOSIUM](#)
- [SUBMISSIONS](#)
- [PUBLIC INTEREST](#)

Navigation

- [Main](#)
- [Registration](#)
- [Schedule](#)
- [Bios](#)
- [Resources](#)
- [Videos & Press](#)

**Organizing Faculty**

Stephen Burbank – David Berger Professor for the Administration of Justice, University of Pennsylvania Law School

Stephen Burbank is the author of definitive works on federal court rulemaking, interjurisdictional preclusion, litigation sanctions, international civil litigation, and judicial independence and accountability. He is co-editor of *JUDICIAL INDEPENDENCE AT THE CROSSROADS: AN INTERDISCIPLINARY APPROACH* (Sage, 2002). His article, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015 (1982) reoriented the theory and practice of court rulemaking. Burbank's recent scholarship includes a detailed study of the Class Action Fairness Act of 2005 in historical perspective, an analysis of different approaches to the study of judicial behavior in law and political science, a paper on private enforcement of statutory and administrative law in the United States and other common law countries, and an empirical study of the retirement decisions of federal judges. Burbank was appointed by the Speaker of the United States House of Representatives to the National Commission on Judicial Discipline and Removal and was a principal author of the Commission's 1993 report.



Jonah Gelbach – Professor of Law, University of Pennsylvania Law School

Jonah Gelbach's interests in law teaching and scholarship include civil procedure, statutory interpretation, law and economics, event study methodology, applied statistical methodology, and applied microeconomics (especially labor and public economics). He has taught students at the JD, PhD, MBA, and undergraduate levels.

His scholarship has appeared in the *Stanford Law Review*, *Yale Law Journal*, *University of Chicago Law Review*, *University of Pennsylvania Law Review*, *Stanford Journal of Complex Litigation*, *American Economic Review*, *Journal of Political Economy*, *Review of Economics and Statistics*, *American Law and Economics Review*, *International Review of Law and Economics*, *Journal of Labor Economics*, *Journal of Public Economics*, *Journal of Human Resources*, and *Demography*, among others.

Gelbach joined the Penn Law faculty in 2013, having previously been on the permanent economics faculty at the University of Maryland for nine years (1998-2007) and the University of Arizona for three (2007-2010).



Tobias Wolff – Professor of Law, University of Pennsylvania Law School

Tobias Barrington Wolff writes and teaches in the fields of civil procedure and complex litigation, the conflict of laws, federal jurisdiction, and constitutional law. He is co-author (with Linda Silberman and Allan Stein) of *CIVIL PROCEDURE: THEORY AND PRACTICE* (Aspen, 5th ed. 2017) and his recently published articles include *Scott v. Harris and the Future of Summary Judgment*, 15 NEV. L.J. 1351 (2015), *Discretion in Class Certification*, 162 U. PA. L. REV. 1897 (2014), *Managerial Judging and Substantive Law*, 90 WASH. U. L. REV. 1027 (2013), and (with Stephen Burbank) *Redeeming the Missed Opportunities of Shady Grove*, 159 U. PA. L. REV. 17 (2010). Wolff has served as counsel or co-counsel for amici curiae in many civil rights cases seeking equal treatment under law for LGBT people.

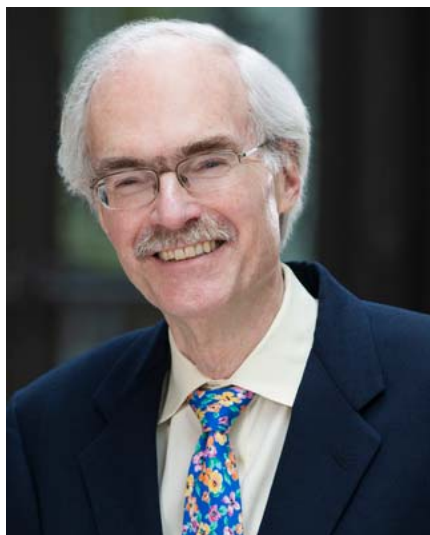
Participants



Janet Cooper Alexander – Frederick I. Richman Professor of Law, Emerita, Stanford Law School

An expert in civil procedure, complex litigation, and federal courts, Janet Cooper Alexander (MA '73) has written on procedural design, the institutional dynamics of litigation and legal and constitutional issues related to terrorism. Her current research focuses on class actions, the civil jury, procedural design, federal courts, and terrorism and the courts.

In addition to her role as a professor at Stanford Law School, Professor Alexander has been a principal investigator at the Stanford Center on Conflict and Negotiation, where she spearheaded interdisciplinary research in dispute resolution and litigation from 1994-2002. Before joining the Stanford Law School faculty in 1987, she was a partner at Morrison & Foerster in San Francisco and an attorney at Califano, Ross & Heineman in Washington, D.C. Professor Alexander is a former law clerk to Justice Thurgood Marshall and Judge Shirley M. Hufstедler, LLB '49, of the United States Court of Appeals for the Ninth Circuit.



Robert G. Bone – G. Rollie White Teaching Excellence Chair in Law, University of Texas Law School

Professor Robert Bone is a leading scholar in the fields of civil procedure, complex litigation, and intellectual property, known especially for his theoretical and interdisciplinary work. Before joining the University of Texas Law School faculty, he was the Robert Kent Professor in Civil Procedure at Boston University.

Professor Bone has published numerous articles in leading law journals and essays in books, and has given many lectures and talks in the United States and other countries. One of his areas of specialty is the application of economic analysis to procedure issues. He has published a book entitled *CIVIL PROCEDURE: THE ECONOMICS OF CIVIL PROCEDURE* (2013), which was translated into Japanese, and several major articles analyzing procedural issues from an economic as well as historical and jurisprudential perspective, including topics in the law of class actions, innovative case aggregation techniques, pleading, preclusion law, court rulemaking, party rulemaking, and the nature of procedural rules. He has also co-authored (with Professors Elizabeth Burch, Charles Silver, and Patrick Woolley) the second edition of an advanced procedure casebook, *THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION* (2d ed. 2013). In addition to his work in procedure, Professor Bone is also well known for his scholarship in the field of intellectual property, especially in the areas of trademark and trade secret law.

Following law school, Professor Bone clerked for United States District Court Judge W. Arthur Garrity, Jr. and served as an associate at the Boston law firm of Hill & Barlow. He has visited at Harvard and Columbia and began his teaching career at the University of Southern California. Professor Bone was selected to give the 2000-2001 Boston University Lecture in honor of his scholarly achievements, and he received Boston University's highest teaching award, the Metcalf Award for Excellence in Teaching, in 1991. He was also voted University of Texas Professor of the Year for 2012-2013. Professor Bone is a member of the American Law Institute.



Andrew Bradt – Assistant Professor of Law, University of California, Berkeley Law

Andrew Bradt is a scholar of civil procedure, conflict of laws, and remedies. His current research focuses on the adaptation of procedural and choice-of-law systems to large-scale multijurisdictional litigation, with a particular interest in federal multidistrict litigation. Bradt's forthcoming article, *A Radical Proposal: The Multidistrict Litigation Act of 1968*, 165 U. PA. L. REV. — (forthcoming 2017), will be published in the upcoming volume of the *University of Pennsylvania Law Review*. His other articles have been published in the *Washington University Law Review*, *Notre Dame Law Review*, the *U.C. Davis Law Review*, the *Hastings Law Journal*, and the *University of Arkansas Law Review*. Bradt is also a co-author, with Geoffrey C. Hazard, William A. Fletcher, and Stephen McG. Bundy, of *PLEADING AND PROCEDURE: CASES AND MATERIALS* (11th ed. 2015).

Prior to joining the Berkeley Law faculty, Bradt was a Climenko Fellow and Lecturer on Law at Harvard Law School. Before entering academia, Bradt worked as a litigator in the Issues & Appeals Group at Jones Day in New York City, and at Ropes & Gray in Boston. He also served as a law clerk to Judge A. Katzmann of the United States Court of Appeals for the Second Circuit and Judge Patti B. Saris of the United States District Court for the District of Massachusetts. He is a member of the state bars of Massachusetts and New York. Bradt graduated *magna cum laude* from Harvard Law School, where he received the Joseph H. Beale Prize for Conflict of Laws, and *summa cum laude* from Harvard College with a degree in Social Studies.



John C. Coffee, Jr. – Adolf A. Berle Professor of Law, Columbia Law School

Professor John C. Coffee, Jr. is the Adolf A. Berle Professor of Law at Columbia University Law School and Director of its Center on Corporate Governance. He is a Fellow at the American Academy of Arts and Sciences and has been repeatedly listed by the *National Law Journal* as among its “100 Most Influential Lawyers in America.” Professor Coffee has served as a Reporter to The American Law Institute for its Corporate Governance Project, has served on the Legal Advisory Board to the New York Stock Exchange, and as a member of the SEC’s Advisory Committee on the Capital Formation and Regulatory Processes. Professor Coffee is the author or editor of several widely used casebooks on corporations and securities regulation, including John C. Coffee, Jr. & Hillary A. Sale, *SECURITIES REGULATION: CASES AND*

MATERIALS (13th ed. 2015); Jesse H. Choper, John C. Coffee, Jr. & Ronald J. Gilson, CASES AND MATERIALS ON CORPORATIONS (8th ed. 2013); and William A. Klein, John C. Coffee, Jr. & Frank Partnoy, BUSINESS ORGANIZATIONS AND FINANCE: LEGAL AND ECONOMIC PRINCIPLES (11th ed. 2010). His books include John C. Coffee, Jr., ENTREPRENEURIAL LITIGATION: ITS RISE, FALL, AND FUTURE (Harvard University Press 2015); John C. Coffee, Jr., GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE (Oxford University Press 2006); John C. Coffee, Jr. *et al.*, KNIGHTS, RAIDERS, AND TARGETS: THE IMPACT OF THE HOSTILE TAKEOVER (Oxford University Press 1988); and Eilis Ferran *et al.*, THE REGULATORY AFTERMATH OF THE GLOBAL FINANCIAL CRISIS (Cambridge University Press 2012). According to a recent survey of law review citations, Professor Coffee is the most cited law professor in law reviews over the last ten years in the combined corporate, commercial, and business law field. In 2015, Lawdragon listed him on its 100 member “Hall of Fame” list of influential lawyers in the United States.



Edward H. Cooper – Thomas M. Cooley Professor of Law, University of Michigan Law School

Professor Edward H. Cooper joined the Law School faculty in 1972 and was named the Thomas M. Cooley Professor of Law in 1988. He is coauthor with the late C.A. Wright and A.R. Miller of the original, second, and third editions of *FEDERAL PRACTICE AND PROCEDURE: JURISDICTION*, a leading multi-volume treatise on federal jurisdiction and procedure, and his articles have contributed to legal scholarship for more than 40 years. From 1991 to 1992, Professor Cooper served as a member of the United States Judicial Conference Civil Rules Advisory Committee. He has served as reporter for the committee since 1992. In addition, he has been a member of the Council of the American Law Institute since 1988, became an emeritus member in 2013, and has served as an adviser on several of its projects. Professor Cooper graduated from Dartmouth College with an AB and earned his LLB at Harvard Law School. He served as a law clerk to Judge Clifford O'Sullivan, United States Court of Appeals for the Sixth Circuit, and then practiced in Detroit. Professor Cooper was an associate professor at the University of Minnesota Law School for five years before joining the Law School faculty.



David Freeman Engstrom – Professor of Law and Bernard D. Bergreen Faculty Scholar, Stanford Law School

David Freeman Engstrom's teaching and writing focus on the institutional design of litigation and regulatory regimes, as well as topics in administrative law, civil procedure, constitutional law, civil rights, and law and education. His award-winning scholarship has appeared in the *Stanford Law Review*, *Yale Law Journal*, and *Columbia Law Review*, among others, and has been cited in dozens of federal and state court decisions and litigation briefs. His expert commentary has appeared in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *USA Today*, *The National Law Journal*, CNN, and MSNBC. He has served as counsel or consultant to a range of entities, including law firms, major corporations, and a leading litigation finance company. Recent scholarly projects include the first large-scale empirical investigation of *qui tam* litigation under the False Claims Act. Current projects include a book charting the institutional evolution of American job discrimination laws, an empirical analysis of agency use of “guidance” documents, and a study of the political economy of American civil procedure rulemaking. Professor Engstrom is an elected member of the American Law Institute and also currently serves on the Model Adjudication Rules Working Group of the Administrative Conference of the United States.

Before joining Stanford's faculty, Engstrom litigated at Kellogg, Huber, Hansen, Todd, Evans & Figel in Washington, D.C., where he represented clients before the United States Supreme Court, United States Courts of Appeals, and various trial courts and agencies. He also clerked for (now Chief) Judge Diane P. Wood of the United States Court of Appeals for the Seventh Circuit and was a John M. Olin Fellow at Yale Law School. Earlier in his career, he worked on education, early childhood, and civil rights issues at the Edward Zigler Center at Yale University and the Hewlett Foundation and taught high school and coached football in the Mississippi Delta. He holds a J.D. from Stanford Law School, a M.Sc. from Oxford University, and a Ph.D. from Yale University.



Sean Farhang – Professor of Law and Associate Professor of Public Policy and Political Science, University of California, Berkeley Law

Sean Farhang is a Professor of Law and an Associate Professor of Political Science and Public Policy at the University of California, Berkeley. His research interests focus mainly on civil litigation, and the role of litigation and courts in regulatory implementation, with a particular interest in the political and institutional forces that shape it. His first book, *THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S.* (Princeton University Press 2010), examines the sources of private litigation in the enforcement of federal law, stressing Congress's role in enacting incentives calculated to mobilize this form of regulatory implementation in the American separation of powers context. His second book, *RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION* (with Stephen Burbank) (forthcoming Cambridge University Press), examines the emergence and development of the political and legal movement to restrict opportunities and incentives for private enforcement of federal law through litigation. He is working on a new book project that investigates the relationship between substantive regulatory policymaking when Congress drafts statutes, and Congress's choice to rely on litigation and courts in implementation. His work has also appeared in numerous social science and law journals. During the 2016-17 academic year, he will be Visiting Professor of Law at Columbia Law School (fall), and Yale Law School (spring).



Judge William A. Fletcher – United States Court of Appeals for the Ninth Circuit

Judge William A. Fletcher was sworn in as United States Circuit Judge for the Ninth Circuit on February 1, 1999. He received a B.A. from Harvard College in 1968 in English History and Literature, *magna cum laude*, a B.A. from Oxford University in 1970 in English Language and Literature, where he studied as a Rhodes Scholar, and a J.D. from Yale Law School in 1975. He was honorably discharged from the United States Navy as a Lieutenant in 1972.

Judge Fletcher clerked for Justice William J. Brennan, Jr., of the United States Supreme Court from 1976 to 1977. He was a law professor at the University of California, Berkeley (Boalt Hall) from 1977 to 1999, specializing in Federal Courts and Jurisdiction and in Civil Procedure. At the time of his appointment to the Ninth Circuit, he was the Richard W. Jennings, Jr., Professor of Law. He is a member of the American Law Institute.

Judge Fletcher is the author of numerous articles, including *The Discretionary Constitution: Institutional Remedies and Judicial Legitimacy*, 91 YALE L.J. 635 (1982); *A Historical Interpretation of the Eleventh Amendment*, 35 STAN. L. REV. 1033 (1983); *The General Common Law and Section 34 of the Judiciary Act of 1789*, 97 HARV. L. REV. 1513 (1984); *The Structure of Standing*, 98 YALE L.J. 221 (1988); *The Eleventh Amendment: Unfinished Business*, 75 NOTRE DAME L. REV. 843 (2000); *International Human Rights in American Courts*, 93 VA. L. REV. 653 (2007); *International Human Rights and the Role of the United States*, 104 NW. U. L. REV. 293 (2010); *Congressional Power over the Jurisdiction of Federal Courts: The Meaning of the Word 'All' in Article III*, 59 DUKE L.J. 929 (2010); *Tribute to Judge Betty Binns*

Fletcher, 84 WASH. L. REV. 1 (2010); *Our Broken Death Penalty*, 89 N.Y.U. L. REV. 805 (2014). He is the co-author, with Professors Geoffrey C. Hazard, Jr., Stephen McG. Bundy, and Andrew G. Bradt, of *PLEADING AND PROCEDURE* (11th ed. 2015).

Judge Fletcher is married to the former Linda Jean Morris. They have three daughters and have lived in Berkeley, California since 1977.



J. Maria Glover - Associate Professor of Law, Georgetown University Law Center

Professor Glover teaches and writes on civil procedure, complex litigation, and the interplay between private litigation and public regulation. Her pieces have appeared in the *Yale Law Journal*, the *N.Y.U. Law Review*, and the *Vanderbilt Law Review*, among others. Before coming to Georgetown in 2012, she was a Climenko Fellow and Lecturer on Law at Harvard Law School. Previously, she clerked for Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit and practiced in the Supreme Court and Appellate practice group at Mayer Brown LLP in Washington, DC. She is a graduate of Vanderbilt Law School, where she was Senior Articles Editor of the *Vanderbilt Law Review* and was awarded the Cecil D. Branstetter Litigation and Dispute Resolution Program Award.



Abbe R. Gluck – Professor of Law and Faculty Director of the Solomon Center for Health Law and Policy, Yale Law School

Abbe R. Gluck is a Professor of Law and the Faculty Director of the Solomon Center for Health Law and Policy at Yale Law School. She joined Yale Law School in 2012, having previously served on the faculty of Columbia Law School. She is an expert on Congress and the political process, federalism, civil procedure, and health law, and is the chair emerita of Section on Legislation and the Law of the Political Process for the Association of American Law Schools. Gluck has extensive experience working as a lawyer in all levels of government. Prior to joining Columbia, she served in the administration of New Jersey Governor Jon Corzine as the special counsel and senior advisor to the New Jersey Attorney General; and in the administration of New York City Mayor Michael Bloomberg, as chief of staff and counsel to the Deputy Mayor for Health and Human Services, senior counsel in the New York City Office of Legal Counsel, and deputy special counsel to the New York City Charter Revision Commission. Prior to law school, she worked in the United States Senate for Senator Paul S. Sarbanes of Maryland.

Before returning to government work after law school, Professor Gluck was associated with the Paul Weiss firm in New York. She earned her B.A. from Yale University, *summa cum laude*, and her J.D. from Yale Law School. Following law school, she clerked for then-Chief Judge Ralph K. Winter on the United States Court of Appeals for the Second Circuit, and for United States Supreme Court Justice Ruth Bader Ginsburg. Gluck's scholarship has been published in the *Yale Law Journal*, the *Harvard Law Review*, the *Stanford Law Review*, the *Columbia Law Review*, the *New England Journal of Medicine*, *Health Affairs*, and many other journals. Among her most recent work is the most extensive empirical study ever conducted about the realities of the congressional law-making process (published in the *Stanford Law Review*) and the *Harvard Law Review*'s Supreme Court issue comment on *King v. Burwell*, the 2015 challenge to the Affordable Care Act. She also served as co-counsel on a Supreme Court brief in both *King* and the 2012 ACA challenge, *NFIB v. Sebelius*. Professor Gluck currently serves on numerous boards and commissions, including as an appointed member of both the Uniform Law Commission and the New York State Taskforce on Life and the Law, and as an elected member of the American Law Institute. In 2015, Gluck

received the Yale Law School's teaching award.



Deborah Hensler – Judge John W. Ford Professor of Dispute Resolution and Associate Dean for Graduate Studies, Stanford Law School

Deborah R. Hensler's empirical research on dispute resolution, complex litigation, class actions, and mass tort liability has won international recognition. A political scientist and public policy analyst who was the director of the RAND's Institute for Civil Justice before joining the Stanford Law School faculty, she has testified before state and federal legislatures in the United States on issues ranging from alternative dispute resolution to asbestos litigation and mass torts and consulted with judges and lawyers outside of the United States on the design of class action regimes. Professor Hensler is the organizer of the Stanford Globalization of Class Actions Exchange, which is spearheading international collaborative research on class actions and group litigation procedures by scholars in Asia, Europe, Latin and North America, and the Middle East. Her co-edited volume, *CLASS ACTIONS IN CONTEXT: HOW CULTURE, ECONOMICS AND POLITICS SHAPE COLLECTIVE LITIGATION*, was published in May 2016.

Noted for her decades-long scholarship on asbestos litigation in the United States, her research and publications have described and interpreted the trajectory of mass claims worldwide. At Stanford, Professor Hensler teaches seminars on complex litigation, transnational litigation, the legal profession, and research design for empirical legal studies and serves as associate dean of graduate studies. She has also collaborated with Dean Emeritus Paul Brest on the development of the law schools' Law & Public Policy Laboratory.

Professor Hensler is a fellow of the American Academy of Arts and Sciences and the American Academy of Political and Social Science and has been awarded a personal chair in empirical studies of mass claims resolution by Tilburg University in the Netherlands. In 2014 she was awarded an honorary doctorate in law by Leuphana University in Germany.



Samuel Issacharoff – Bonnie and Richard Reiss Professor of Constitutional Law, New York University School of Law

Samuel Issacharoff is the Reiss Professor of Constitutional Law. His wide-ranging research deals with issues in civil procedure (especially complex litigation and class actions), law and economics, constitutional law, particularly with regard to voting rights and electoral systems, and employment law. He is one of the pioneers in the law of the political process, where his casebook, *LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (3d ed. 2007) (co-authored with Stanford's Pam Karlan and NYU's Rick Pildes) and dozens of articles have helped to create a vibrant new area of constitutional law. He is also a leading figure in the field of procedure, both in the academy and outside. He served as the reporter for the *Principles of the Law of Aggregate Litigation* of the American Law Institute.

Issacharoff is a 1983 graduate of the Yale Law School. After clerking, he spent the early part of his career as a voting rights lawyer. He then began his teaching career at the University of Texas in 1989, where he held the Joseph D. Jamail Centennial Chair in Law. In 1999, he moved to Columbia Law School, where he was the Harold R.

Medina Professor of Procedural Jurisprudence. His published articles appear in every leading law review, as well as in leading journals in other fields. Issacharoff is a fellow of the American Academy of Arts and Sciences.



Margaret H. Lemos – Robert G. Seaks LL.B. '34 Professor of Law, Duke University School of Law

Margaret H. Lemos is a scholar of constitutional law, legal institutions, and procedure. Her scholarship focuses on the institutions of law interpretation and enforcement and their effects on substantive rights. She writes in four related fields: federalism; administrative law, including the relationship between courts and agencies; statutory interpretation; and civil procedure. Her articles have been published in the *Supreme Court Review* as well as in the *Harvard Law Review*, *New York University Law Review*, *Texas Law Journal*, *Minnesota Law Review*, *Vanderbilt Law Review*, and *Notre Dame Law Review*.

Professor Lemos came to Duke Law in 2011 from the Benjamin N. Cardozo School of Law, where she was an associate professor. Prior to joining the Cardozo faculty, Lemos was a Furman Fellow and program coordinator at New York University School of Law, a Bristow Fellow at the Office of the Solicitor General, and a law clerk for Judge Kermit V. Lipez of the United States Court of Appeals for the First Circuit, and for United States Supreme Court Justice John Paul Stevens. She graduated *summa cum laude* from New York University School of Law, where she was senior notes editor of the *New York University Law Review*.



David Marcus – 1885 Society Distinguished Scholar and Professor of Law, The University of Arizona James E. Rogers College of Law

David Marcus is a Professor of Law and 1885 Society Distinguished Scholar at the University of Arizona. After receiving his law degree from Yale Law School, Professor Marcus clerked for Judge Allyn Ross of the United States District Court for the Eastern District of New York and Judge William Fletcher of the United States Court of Appeals for the Ninth Circuit. He also litigated class actions as an associate at Lieff, Cabraser, Heimann & Bernstein LLP. Professor Marcus has taught at the University of Arizona since 2006, except for a year spent as a visiting professor at Yale. His scholarship on the class action includes a several-part history of Rule 23. Published articles cover the years 1938 through 1980, and a forthcoming article will continue the story through the mid-1990s. Professor Marcus's other research interests include public interest litigation, administrative law, and legal history.



Richard Marcus – Distinguished Professor of Law & Horace O. Coil Chair in Litigation, University of California, Hastings College of Law

Professor Richard Marcus holds the Coil Chair in Litigation at University of California Hastings College of the Law in San Francisco. Since 1996, he has served as Associate Reporter of the United States Judicial Conference Advisory Committee on Civil Rules. In that capacity he was a principal drafter of the 2003 amendments to Rule 23, and he has since 2011 served as Reporter to the Advisory Committee's Rule 23 Subcommittee, which developed the preliminary draft of proposed amendments to Rule 23 published for public comment in August, 2016.

Professor Marcus is lead author of the leading casebooks *COMPLEX LITIGATION: CASES AND MATERIALS ON ADVANCED CIVIL PROCEDURE* (6th ed. 2015), and *CIVIL PROCEDURE: A MODERN APPROACH* (6th ed. 2013). He has written widely on class actions and many other procedural topics, including: *Bending in the Breeze: American Class Action in the Twenty-First Century*, 65 DEPAUL L. REV. 497 (2016); *Still Confronting the Consolidation Conundrum*, 88 NOTRE DAME L. REV. 1561 (2012); *Scrutinizing the Merits on Class Certification*, 79 GEO. WASH. L. REV. 324 (2011); *They Can't Do That, Can They? Tort Reform Via Rule 23*, 80 CORNELL L. REV. 858 (1995) (cited by the Supreme Court in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)). In addition, he is the author of four volumes of the *FEDERAL PRACTICE & PROCEDURE* treatise.



Judge Theodore A. McKee – United States Court of Appeals for the Third Circuit

Judge Theodore A. McKee was born in a rural community near Rochester, New York. Judge McKee attended State University of New York at Cortland, where he was active in student government and played football, graduating in 1969. Prior to attending law school, Judge McKee served as the Director of Minority Recruitment and Admissions for the State University of New York at Binghamton. In 1972, Judge McKee entered Syracuse University College of Law. He graduated in 1975 *magna cum laude* and was awarded several academic honors including Order of the Coif.

After two years at the law firm of Wolf, Block, Schorr & Solis-Cohen in Philadelphia, Judge McKee served as an Assistant United States Attorney, Deputy Solicitor to the Law Department of the City of Philadelphia, and General Counsel to the Philadelphia Parking Authority. As an Assistant U.S. Attorney, Judge McKee's work included prosecuting cases of public corruption, investigating police brutality, and assisting in the prosecution of Philadelphia homicide detectives charged with civil rights violations. Judge McKee served as a Judge of the Court of Common Pleas for the First Judicial District of Pennsylvania for more than a decade, and he chaired the

Pennsylvania Sentencing Commission for four of those years. In 1994, President Clinton appointed Judge McKee to the United States Court of Appeals for the Third Circuit.

His deep commitment to social justice continues to find expression in his judicial and public interest work. He serves as an Advisor to the American Law Institute project to rewrite the Articles of the Model Penal Code that address sentencing. He also serves on the board of directors of several non-profit organizations, including Fox Chase Cancer Center, Temple University, and City Year Greater Philadelphia. Judge McKee has also served on the boards of the Crime Prevention Association (“Caring People Alliance”) and been active in Concerned Black Men, both of which help direct urban youth away from crime, New Directions for Women, which provides female offenders with drug rehabilitation, education, and job counseling, and the Edna McConnell Clark Foundation.

In addition to his many other commitments, Judge McKee taught trial advocacy at Rutgers University School of Law in Camden from 1980 to 1991. He has also maintained a disciplined interest in karate for the past 35 years, and is an avid reader of non-quantitative books on physics and quantum theory. Judge McKee is married to Ana Luisa Pujols, a Philadelphia internist, and is the proud parent of two daughters.



Troy McKenzie – Professor of Law on Leave, New York University School of Law

Troy A. McKenzie is a Professor of Law at New York University School of Law. His research and teaching interests include bankruptcy, civil procedure, complex litigation, and the federal courts. He has served as a faculty co-director of two NYU centers: the Institute of Judicial Administration and the Center on Civil Justice. From 2011-2015, he served, by appointment of the Chief Justice, as a reporter to the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States. McKenzie earned a bachelor's degree in chemical engineering in 1997 from Princeton University and a law degree in 2000 from NYU, where he was an executive editor of the *Law Review* and a member of the Order of the Coif. After law school, he served as a law clerk to Judge Pierre N. Leval of the United States Court of Appeals for the Second Circuit and Justice John Paul Stevens of the United States Supreme Court. Before joining the NYU faculty in 2007, McKenzie was a litigation associate at Debevoise & Plimpton in New York.



Arthur R. Miller – University Professor, New York University School of Law

Arthur R. Miller CBE is this nation's leading scholar in the field of civil procedure and is co-author with the late Charles Wright of *FEDERAL PRACTICE AND PROCEDURE*, the legendary treatise in the field. Professors Miller and Wright are among the most-often cited and well regarded law treatise writers today. Their multi-volume series is an essential reference for judges and lawyers.

Arthur Miller is also one of the nation's most distinguished legal scholars in the areas of civil litigation, copyright and unfair competition, and privacy. He is the author of more than 40 books and numerous articles, including *THE ASSAULT ON PRIVACY: COMPUTERS, DATA BANKS, AND DOSSIERS*, the first book warning of the threat to privacy posed by modern information technology. Miller is currently a University Professor at New York University and the NYU School of Continuing and Professional Studies. This professorship is conferred on outstanding scholars in recognition of the interdisciplinary dimension and breadth of their work. Previously, Miller was the Bruce Bromley Professor of Law at Harvard, where he earned his law degree and taught for 36 years.

Miller is the recipient of numerous awards, including five honorary doctorates, three American Bar Association Gavel Awards and a Special Recognition Gavel Award for promoting public understanding of the law. He recently was honored by the Queen Elizabeth II for his charitable and media work by being named to the Commander of the Order of the British Empire. A renowned commentator on law and society, he won an Emmy for his work on *THE CONSTITUTION: THAT DELICATE BALANCE*, one of several acclaimed PBS series which he has moderated. Miller also served for two decades as the legal editor for ABC's *GOOD MORNING AMERICA* and hosted several weekly issue shows on national television.

Miller has argued cases in all of the United States Circuit Courts of Appeal and several before the United States Supreme Court. He has worked in the public interest in the

areas of privacy, computers, copyright, and the courts and has served as a member and reporter of the Advisory Committee of Civil Rules of the Judicial Conference of the United States by appointment of two chief justices of the United States, as reporter and adviser to the American Law Institute, a member of a special advisory group to the Chief Justice of the United States Supreme Court, and as a member of various American Bar Association committees, among others. In addition, Miller was appointed by President Ford as commissioner on the United States Commission on New Technological Uses of Copyrighted Work.



Judith Resnik – Arthur Liman Professor of Law, Yale Law School

Judith Resnik is the Arthur Liman Professor of Law at Yale Law School, where she teaches about federalism, procedure, courts, prisons, equality, and citizenship. Professor Resnik's books include *REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS* (with Dennis Curtis) (Yale University Press, 2011); *FEDERAL COURTS STORIES* (co-edited with Vicki C. Jackson) (Foundation Press, 2010); and *MIGRATIONS AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER* (co-edited with Seyla Benhabib) (2009). In 2014, Resnik was the co-editor (with Linda Greenhouse) of the *Daedalus* volume *THE INVENTION OF COURTS*.

Recent articles include *Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights*, 124 *YALE L.J.* 2804 (2015), *Federalism(s)'s Forms and Norms: Contesting Rights, De-Essentializing Jurisdictional Divides, and Temporizing Accommodations*, in *FEDERALISM AND SUBSIDIARITY: NOMOS LV* (2014), and *The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75*, 162 *U. PA. L. REV.* 1793 (2014).

Professor Resnik chairs Yale Law School's Global Constitutional Law Seminar, a part of the Gruber Program on Global Justice and Women's Rights, and is the editor of the volumes from 2012 forward, including *The Reach of Rights* (2015). She is the founding director of Yale's Arthur Liman Program and Fund, supporting fellowships for law graduates and for undergraduates, and sponsoring colloquia and seminars on the civil and criminal justice systems. In 2015, the Liman Program joined with the Association of State Correctional Administrators in co-authoring *TIME-IN-CELL: THE LIMAN-ASCA 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON*. The report is the first to provide updated information, as of the fall of 2014, on both the numbers of people (80,000 to 100,000) and the conditions in solitary confinement nationwide.

Professor Resnik has chaired the Sections on Procedure, on Federal Courts, and on Women in Legal Education of the American Association of Law Schools. She is a Managerial Trustee of the International Association of Women Judges. Professor Resnik served as a founder and for more than a decade as a co-chair of Yale University's Women Faculty Forum, begun in 2001. Professor Resnik is also an occasional litigator; she argued *Mohawk Industries, Inc. v. Carpenter*, decided in 2009 by the United States Supreme Court.



Judge Anthony J. Scirica – United States Court of Appeals for the Third Circuit// Senior Fellow, University of Pennsylvania Law School

Anthony J. Scirica, one of the nation's leading jurists, is a Senior Judge on the United States Court of Appeals for the Third Circuit. He became a Senior Fellow at Penn Law in 2013 and teaches courses in civil procedure and complex litigation. Judge Scirica was appointed to the Court of Appeals in 1987 and served as Chief Judge from 2003 to 2010. In addition to his service on the bench, he served as a member and then as Chair of the Executive Committee of the United States Judicial Conference, the

governing body of the federal judiciary. He currently serves as Chair of its Committee on Judicial Conduct and Disability and as a member of the Committee on International Relations. He has previously served as Chair of the United States Judicial Conference Committee on Rules of Practice and Procedure, Chair of the Judicial Conference Working Group on Mass Torts, and as a member of the Advisory Committee on Civil Rules.



Linda J. Silberman – Martin Lipton Professor of Law and Co-Director of the Center for Transactional Litigation, Arbitration, and Commercial Law, New York University School of Law

Linda Silberman, the Martin Lipton Professor of Law, teaches Civil Procedure, Conflict of Laws, Comparative Procedure, International Litigation, and International Commercial Arbitration. She is co-director of NYU's Center for Transnational Litigation, Arbitration, and Commercial Law. She is a member of the editorial advisory boards of the *Journal of Private International Law* (UK) and *Revista Española de Derecho Internacional* (Spain). She is also a member of the Academic Council of the Institute of Transnational Arbitration, a fellow of the American Bar Foundation, and a board member of the Institute of Judicial Administration. She was recently appointed as member of the International Advisory Council to the Family Justice Courts of Singapore.

Her own scholarship covers a wide variety of domestic and transnational subject areas: conflict of laws; domestic and comparative procedure; transnational litigation, in particular judicial jurisdiction and judgment recognition; class actions; international arbitration; and international child abduction. Her articles have been cited by state and federal courts, including the United States Supreme Court, as well as by the courts of other nations. Silberman has played an important role at the American Law Institute (ALI), serving as an adviser on three different projects: the Restatement Third of the United States Law of International Commercial Arbitration, the Restatement Fourth of the Foreign Relations Law of the United States, and the Restatement Third on Conflict of Laws. Previously, she was co-reporter (with Andreas Lowenfeld) for ALI's Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute.

Professor Silberman has testified in Congress on judgment recognition, first on libel tourism and later on the need for a federal statute on recognition and enforcement. She has been active in the New York City Bar Committee on International Disputes as well as the City Bar Committee on Arbitration. She is also a member of the State Department's Advisory Committee on Private International Law. Professor Silberman recently served as a distinguished research scholar at Queen Mary School of International Arbitration in London and earlier as a scholar-in-residence at WilmerHale in London. Professor Silberman is co-author of *CIVIL PROCEDURE: THEORY AND PRACTICE* (4th ed. 2013) and *CIVIL LITIGATION IN COMPARATIVE CONTEXT* (2007). Professor Silberman has been invited to give the general course on Private International Law at the Hague Academy of International Law in 2020.



Catherine Struve – Professor of Law, University of Pennsylvania Law School

Catherine Struve teaches and researches in the fields of civil procedure and federal courts. She served from 2006 to 2015 as reporter to the Judicial Conference Advisory Committee on Appellate Rules, and she currently serves as co-reporter to a Third Circuit task force that has prepared model jury instructions for use in civil cases. She won the Law School's Harvey Levin Award for Excellence in Teaching in 2003, 2009, and 2015. She was elected to the Council of the American Law Institute in 2010.



Chief Judge Diane Wood – United States Court of Appeals for the Seventh Circuit and Senior Lecturer in Law at University of Chicago Law School

Diane P. Wood is the Chief Judge of the United States Court of Appeals for the Seventh Circuit and a Senior Lecturer in Law at the University of Chicago Law School. Chief Judge Wood attended the University of Texas at Austin, earning her B.A. in 1971 (highest honors), and her J.D. in 1975 (Order of the Coif). She clerked for Judge Irving L. Goldberg on the United States Court of Appeals for the Fifth Circuit (1975-76), and for Justice Harry A. Blackmun of the United States Supreme Court (1976-77). She began her career as a legal academic in 1980 after a brief period at the United States Department of State. From 1993 until she was appointed a Circuit Judge for the Seventh Circuit in 1995, she served as Deputy Assistant Attorney General in the Antitrust Division of the United States Department of Justice. She became Chief Judge of the Seventh Circuit on October 1, 2013. Chief Judge Wood is a Fellow of the American Academy of Arts & Sciences and is on the Council of the American Law Institute. Chief Judge Wood is married to Dr. Robert L. Sufit. She has three children and three step-children. She enjoys playing the oboe and English horn in several Chicago-area amateur orchestras.

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